

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-293-E - ORDER NO. 2001-698
AUGUST 1, 2001

IN RE: Blue Ridge Electric Cooperative, Inc.)	TEMPORARY CEASE
)	AND DESIST ORDER
vs.)	
)	
Seneca Light and Water and/or The City of)	
Seneca)	

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Emergency Petition for Rule to Show Cause and Petition for Immediate Cease and Desist Order filed by Blue Ridge Electric Cooperative, Inc. (Blue Ridge or the Cooperative) against Seneca Light and Water. The City of Seneca filed a Return to the Petition. Since the City of Seneca furnishes electricity and water through its utility department, Seneca Light and Water, we shall refer to both the City of Seneca and Seneca Light and Water interchangeably as "Seneca". Because of the reasoning stated below, we grant a temporary cease and desist order against Seneca.

ALLEGATIONS OF THE PLEADINGS

At present, according to Blue Ridge's Petition, Seneca seeks to provide electric service to a new Wal-Mart Supercenter site located along U.S. Highway 123 between the City of Seneca and the Town of Westminster. (Seneca seeks to provide power to

associated businesses as well.) The anticipated load is 1,100 KW, more or less. The site is fully situated within territory assigned to Blue Ridge under the terms of the Territorial Assignment Act of 1969. Blue Ridge asserts that it has been providing service to this area for at least fifty (50) years and has distribution facilities on this site. Blue Ridge also asserts that it has sufficient capacity available to immediately supply reliable electric service to the Wal-Mart Supercenter and any associated businesses. The Cooperative states that it has made long term power supply commitments based upon the growth of this area and this site. See Affidavit of C. Alan Blackmon and Exhibit A to the Petition.

Blue Ridge further notes that Seneca has already begun initial construction of duplicate electric service facilities, lines, and equipment to begin providing service to the area, and that the site in which Seneca seeks to provide service is not lawfully within the municipality of the City of Seneca at this time. Blue Ridge states that the City of Seneca is seeking annexation of the site; however, the matter has not been finalized, and is subject to challenge. Blue Ridge states that it has previously advised representatives of Wal-Mart and Seneca of its strenuous objections to the construction of facilities and provision of service to this site by Seneca, and the annexation of the area by Seneca, to no avail. Blue Ridge alleges that the construction of new facilities by Seneca and the provision of service alleged to be illegal unreasonably interfere with Blue Ridge's rights and its members to operate within its lawfully assigned territory. See Blackmon Affidavit.

Seneca notes in its Return to Blue Ridge's Petition that it owns and operates its own municipal electric utility system pursuant to Article VIII Section 16 of the

Constitution of South Carolina. Seneca states that it distributes electricity inside and outside of the city limits through its utility department, which is frequently referred to as Seneca Light & Water. Seneca states that area in question has been annexed into the City of Seneca, and that annexation is complete as to both hospital and Wal-Mart Supercenter property. Seneca states that a legal challenge to the annexation may still lie, but that such a challenge does not stay the effectiveness of the completed annexation. Seneca notes that, in its opinion, the Commission has no jurisdiction to inquire into any allegations constituting a contest to the annexation or relying on a pending contest to the annexation. Further, Seneca states that the Territorial Assignment Act is inapplicable in this context, since the site at issue is now inside the corporate limits of the City of Seneca. See Affidavit of Gregory P. Dietterick.

Finally, although Seneca admits that it is an “electrical utility” outside of its city limits, the site at issue is inside the city limits according to Seneca, so no certificate of public convenience and necessity is required to be obtained from this Commission by Seneca. Also, Seneca states that the Wal-Mart Supercenter has requested electric service from it.

Blue Ridge states in its Reply to the Return that this Commission has jurisdiction over this matter, since it involves the proper application and enforcement of the Territorial Assignment Act. Blue Ridge does not challenge the right of the City of Seneca to annex property in a lawful manner, but it does assert that the validity of the annexation of property in this instance is subject to lawful challenge in the courts of South Carolina. Blue Ridge notes that there has been no expiration of the challenge period established by

statute or a determination by the Courts of South Carolina stating that the annexation of such affected areas by the City of Seneca is now lawfully part of the municipality and no longer subject to legal challenge. Blue Ridge further states that the annexation of the area in question has not been legally finalized, effectuated, and not finally incorporated into the municipality of the City of Seneca for purposes of application of the Territorial Assignment Act. Blue Ridge argues that this Act provides that it is currently the rightful party authorized to provide and furnish electric service until such time of any challenge of a claimed annexation has been judicially resolved.

Blue Ridge states that it seeks to maintain the *status quo ante* wherein the territory assigned by the Commission to the Petitioner and in which the Petitioner currently has facilities continue without disruption or interference. Further, Blue Ridge disputes that the statutes cited by Seneca make the area in question finally incorporated within the municipality and no longer subject to challenge. Blue Ridge asserts that the annexation of the affected areas, subject to the Territorial Assignment Act, is not part of the municipality until any lawful dispute, or challenge concerning the annexation is finally resolved. Blue Ridge states a belief that the matter is not final or effectuated with full force of the law until the appeals or challenge period has expired.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Blue Ridge Electric Cooperative, Inc. is an “electric supplier” as defined in S.C. Code Ann. Section 58-27-610 (1976).

2. Seneca Light and Water is an “electrical utility” as defined in S.C. Code Ann. Section 58-27-10 (1976) with regard to the provision of its electric service outside of the City of Seneca’s municipal limits.

3. Seneca seeks to provide electric service to a new Wal-Mart Supercenter site (and associated businesses) on a site along U.S. Highway 123 between the City of Seneca and the Town of Westminster.

4. The site in question is fully situated within territory assigned to Blue Ridge under the terms of the Territorial Assignment Act of 1969, S.C. Code Ann. Section 58-27-610, et seq. (Supp. 2000).

5. Seneca has already begun initial construction of duplicate electric service facilities, lines, and equipment to begin providing electric service over the objections of Blue Ridge.

6. The City of Seneca has taken certain steps to annex the site in question; however, since the lawfulness of the annexation has been timely challenged, the courts must now determine if the area in question actually is within the city limits of Seneca. The Commission is responsible for enforcing the Territorial Assignment Act in order to avoid unnecessary and costly duplication of service. Until the courts render a decision, the area remains outside of the boundaries of the City of Seneca for purposes of the Commission’s obligation to enforce the Territorial Assignment Act. As an “electrical utility”, the city remains subject to the jurisdiction of the Commission with regard to the provision of electric service outside of its lawful city limits. The Commission has no jurisdiction over the annexation process and those issues must be decided by the courts.

7. S.C. Code Ann. Section 58-27-1230 (1976) states that “no electrical utility, except a municipality within its corporate limits, shall hereafter begin the construction or operation of any electrical utility plant or system or any extension thereof...without first obtaining from the Commission a certificate that public convenience and necessity require or will require such construction or operation...”

8. S.C. Code Ann. Section 58-27-1270 (1976) states that “whenever agovernmental body...is engaged or is about to engage in construction or operation without having secured a certificate of public convenience and necessity as required by the provisions of this chapter,....any...electric cooperative... may file a complaint with the Commission. The Commission may, with or without notice, make its order requiring the party complained of to cease and desist from such construction or operation...”

9. In the present case, the City of Seneca, and/or Seneca Water & Light began a construction of an extension to the municipal power lines outside the city limits of Seneca and into Blue Ridge Electric Cooperative assigned territory without obtaining the requisite certificate of public convenience and necessity. Blue Ridge properly filed a complaint in the matter, and is entitled to the relief provided for in S.C. Code Section 58-27-1270 (1976).

10. Accordingly, the City of Seneca and/or Seneca Water & Light is hereby ordered to cease and desist construction of the facilities, lines, and equipment in Blue Ridge territory temporarily until such further Order of this Commission as may be issued. All other relief requested by Blue Ridge shall be held in abeyance.

11. Further, Blue Ridge shall be restricted from providing temporary electric service to the site in question, pending the resolution of the annexation challenge by the South Carolina Court system.

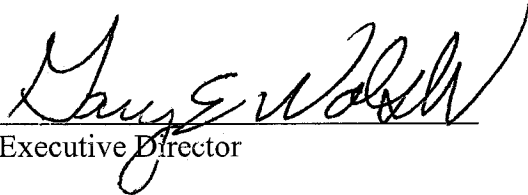
12. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)